

the employee's true hourly rate in the particular week.

The employee's basic rate for the second quarter of 1964 will be similarly computed at the end of the first quarter of that year by adding together the hours worked and pay received in the second, third, and fourth quarters of 1963 and the first quarter of 1964 (lines 2, 3, 4 and 6) so that the totals now reflect the figures in line 7. The regular rate is again computed by dividing pay received (\$4,582.00) by hours worked (2,181) and the new basic rate would be \$2.10.

(2) *Example.* Assume that an employee employed under a similar arrangement agrees to receive overtime premium pay for each workweek on the normal pay day, based each quarter on one-half his established basic rate determined by the *quarterly* method rather than by the *annual* method previously discussed. His established basic rate for the first quarter of 1964 would therefore be determined by computing his average hourly rate for the *last quarter* of 1963. To illustrate, if in the latter quarter the employee received \$1,156.00 in straight time compensation and worked 561 hours, his basic rate for the first quarter of 1964 would therefore be \$2.06 (\$1,156.00÷561 hours). During the overtime weeks in this quarter there would be due him, in addition to his straight time compensation, premium pay of \$1.03 (\$2.06× 1/2) for each hour he works in excess of the applicable maximum hours standard.

As in the previous example the established basic rate must be used in every overtime week in the quarter for which it was computed without regard to the employee's true hourly rate in the particular quarter.

(Sec. 1, 52 Stat. 1060, 1062, as amended, 29 U.S.C. 201, *et seq.*)

[28 FR 11266, Oct. 22, 1963, as amended at 32 FR 3293, Feb. 26, 1967]

RATES AUTHORIZED ON APPLICATION

§ 548.400 Procedures.

(a) If an employer wants to use an established basic rate other than one of those authorized under § 548.3, he must obtain specific prior approval from the Administrator. For example, if an employer wishes to compute overtime compensation for piece workers for each workweek in a 4-week period at established basic rates which are the straight-time average hourly earnings for each employee for the immediately preceding 4-week period, he should apply to the Administrator for authorization. The application for approval of such a basic rate should be addressed to the Administrator of the Wage and

Hour Division, U.S. Department of Labor, Washington, DC 20210. No particular form of application is required but the minimum necessary information outlined in § 548.4 should be included. The application may be made by an employer or a group of employers. If any of the employees covered by the application is represented by a collective bargaining agent, a joint application of the employer and the bargaining agent should be filed. It is not necessary to file separate applications for each employee. One application will cover as many employees as will be paid at the proposed basic rate or rates.

(b) Prior approval of the Administrator is also required if the employer desires to use a basic rate or basic rates which come within the scope of a combination of two or more of the paragraphs in § 548.3 unless the basic rate or rates sought to be adopted meet the requirements of a single paragraph in § 548.3. For instance, an employee may receive free lunches, the cost of which, by agreement or understanding, is not to be included in the rate used to compute overtime compensation.¹⁷ In addition, the employee may receive an attendance bonus which, by agreement or understanding, is to be excluded from the rate used to compute overtime compensation.¹⁸ Since these exclusions involve two paragraphs of § 548.3, prior approval of the Administrator would be necessary unless the exclusion of the cost of the free lunches together with the attendance bonus do not affect the employee's overtime compensation by more than 50 cents a week on the average, in which case the employer and the employee may treat the situation as one falling within a single paragraph, § 548.3(e).

(Sec. 1, 52 Stat. 1060, as amended, 29 U.S.C. 201, *et seq.*)

[20 FR 5682, Aug. 6, 1955, as amended at 21 FR 338, Jan. 18, 1956; 32 FR 3294, Feb. 25, 1967]

§ 548.401 Agreement or understanding.

If the agreement or understanding establishing the basic rate is in writing, whether incorporated in a collective

¹⁷ See § 548.304.

¹⁸ See § 548.305.

bargaining agreement or not, a copy of the agreement or understanding should be attached to the application. If it is not in writing, however, the application to the Administrator for approval of a basic rate should contain a written statement describing the substance of the agreement or understanding, including the proposed effective date and term of the agreement or understanding. The term of the agreement or understanding may be of definite duration, or may run indefinitely until modified or changed. If an agreement or understanding is modified, a new application for authorization should be made.¹⁹

[20 FR 5683, Aug. 6, 1955, as amended at 21 FR 338, Jan. 18, 1956]

§ 548.402 Applicable overtime provisions.

The application should also contain a description of the terms of employment relating to overtime so that the Administrator can determine how the established basic rate will be used if it is approved. For instance, if the employees are to be paid time and one-half the basic rate for all hours worked in excess of 35 each workweek, this should be stated in the application. If the employees are to be paid double time for work on Sundays the application should so state.

[20 FR 5683, Aug. 6, 1955]

§ 548.403 Description of method of calculation.

The established basic rate for which approval will be sought will normally be a formula or method of calculation of a rate rather than a specific dollars and cents rates.²⁰ The application should contain a complete description of the formula or method of calculation of the established basic rate, including any necessary examples which will enable the Administrator to understand how the rate will be computed and applied.

[20 FR 5683, Aug. 6, 1955]

¹⁹ See § 548.200 for a further explanation of the requirements as to the agreement or understanding establishing the basic rate.

²⁰ See § 548.200.

§ 548.404 Kinds of jobs or employees.

The application should describe or otherwise identify the employees to whom the established basic rate will apply. The individual employees need not be identified by name but may be described in terms of job classification, department, location or other appropriate identifying characteristics.

[20 FR 5683, Aug. 6, 1955]

§ 548.405 Representative period.

(a) The application must set forth the facts relied upon to show that the established basic rate is substantially equivalent to the average hourly earnings of the employee exclusive of overtime premiums over a representative period of time.²¹ The basic rate will be considered "substantially equivalent" to the average hourly earnings of the employee if, during a representative period, the employee's total overtime earnings calculated at the basic rate in accordance with the applicable overtime provisions are approximately equal to the employee's total overtime earnings computed on his average hourly earnings for each workweek in accordance with section 7(a) of the Act.²²

(b) The length of time constituting a representative period will depend on the factors that cause the employee's average hourly earnings to vary appreciably from week to week. For instance, if the variation in earnings of an employee paid on an incentive basis is due to the difference in availability of work in the slow and busy seasons the period used for comparison of overtime earnings would have to include both a slow and a busy season in order to be representative. Likewise, if a piece-worker's average hourly earnings vary appreciably from week to week because of differences in materials or styles worked on, the period used for

²¹ See §§ 778.200 through 778.207 of this chapter for further discussion of overtime premiums which may be excluded from the regular rate of pay.

²² See §§ 778.208 through 778.225 of this chapter for further discussion of the exclusion of vacation pay, holiday pay, discretionary bonuses and other payments from the average hourly earnings which comprise the employee's regular rate of pay.